

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 5 of 1985

For Approval and Signature:

Hon'ble ACTING CHIEF JUSTICE MR.JN BHATT
and
Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

KOLI DHANJI ALUBHAI

Versus

AMARBAI KANJI KERAJ

Appearance:

M/S. B.K. & G. for Appellants No. 1-3
MR DAKSHESH MEHTA for Appellants No. 1-3
MR BHARAT J SHELAT for Respondents No. 1-3
MR SUNIL B PARIKH for Respondent No. 4

CORAM : ACTING CHIEF JUSTICE MR.JN BHATT
and
MR.JUSTICE A.L.DAVE

Date of decision: /07/2003

C.A.V. JUDGEMENT

(Per : MR.JUSTICE A.L.DAVE)

1. Present appeal is preferred under Section 110-D
of the Motor Vehicles Act, 1939, to challenge the

judgment and award passed by Motor Accident Claims Tribunal (Auxiliary), Rajkot, on November 30, 1983, in Claim Case No.11 of 1981, whereunder present respondents No.1, 2 and 3 had claimed compensation from the appellants by way of damages sustained by the original applicants because of an accident that occurred on August 29, 1980, at about 7.30 A.M. on Rajkot-Bhuj State Highway, near the road junction proceeding to Tankara village. In the said accident, one Kanjibhai Karsan, husband of applicant No.1, while riding a newly purchased scooter, was knocked down by Truck No.4245, driven by appellant No.1, owned by appellant No.2 and insured by transposed respondent No.4.

1.1 The claimants had claimed an amount of Rs.1,45,000.- saying that the income of the deceased was Rs.1000/- per month, he was aged 36 years, hail and hearty and would have lived a long life. The claim was opposed to by the driver, owner and insurer of the truck by filing written statement Ex.17, denying the contentions raised in the claim petition.

1.2 Considering the evidence on record, the Tribunal held that the driver of the truck was primarily responsible for the accident by driving the truck in a rash and negligent manner and held that opponents No.2 and 3 would also be liable to pay the compensation jointly and severally with the driver, they being the owner and insurer, respectively, and awarded an amount of Rs.1,02,500/- as compensation under various permissible heads.

2. When the matter was called out, none appeared for the appellants, despite our sufficient waiting.

3. We have considered the evidence on record while examining the original record and proceedings of the Trial Court. We find that the Tribunal has assessed the evidence in its proper perspective on the question of negligence. It appears that, much was argued on the Police Statement where it was said that some sort of signal was given by the Truck driver. However, it is rightly appreciated that the signal was so ambiguous that it was not possible to be understood. When original opponent No.1, the driver, was in charge of a heavy vehicle like truck, he owed greater degree of duty or care and greater sense of responsibility towards other traffic. He ought to have given proper signal before taking a turn. Instead, he abruptly took the turn which resulted into the mishap.

3.1 So far as the quantum part is concerned, we find that there is ample evidence led by the original claimants to indicate the income and savings of the deceased. The Tribunal has awarded compensation after taking into consideration the settled principles governing the quantum of compensation. It can, by no stretch of imagination, be said that the assessment of the compensation and consequent award by the Tribunal, is inflated in any manner. We do not find any reason to interfere with the judgment and award of the Tribunal under challenge before us in this appeal. The appeal deserves dismissal and is, therefore, dismissed with costs.

[J.N. BHATT, ACTG. C.J.]

[A. L. DAVE, J.]

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